

IMPRISONMENT SENTENCE WITH PROBATION ON MINIMUM WAGES NON-COMPLIANCE CRIME AS A RESULT OF THE CONVICTS' GOODWILL

Juliandi¹, Dey Ravena², Rini Irianti Sunday³

¹Law Science Doctoral Program Student, Faculty of Law, Universitas Islam Bandung

^{2,3}Faculty of Law, Universitas Islam Bandung

ABSTRACT

This study examines the problem of imposing prison sentences with a probationary period on the crime of minimum wage non-compliance, due to the good faith of the defendant by delivering wage deficiency or adjusting wages at minimum level before the panel of judges decided the case as in verdict number 1394/Pid.B/2015/PN.JKT.PST, number 1662/Pid.B/2015/PN.LBP, and number 725/Pid.Sus/2019/PN TJK. This research is normative legal research which is descriptive in nature, through arguments provision based on the research results. The approaches used in this study are statutory and case study approaches. Data collection technique is a literature study, which further analyzed by utilizing deductive method. The results of the study revealed that the imposition of suspended sentence in the crime of minimum wage non-compliance is appropriate based on the perspective of company goodwill. The reason behind it is that the imposition will provide benefits to employees who are still working and depend their livelihood on the company. It also provides opportunities for victims to return to work at the company by earning a decent wage as stipulated in the Labor Law.

Keyword: - probation, minimum wage non-compliance, goodwill

1. INTRODUCTION

The working relationship that occurs between workers and employers gives rise to rights and obligations. One of the rights of workers which is the obligation of employers is wages.[1] The minimum wage is an important aspect in ensuring employee welfare and is an obligation that must be fulfilled by the company.[2] In connection with employee wage regulation, Indonesian government issued Article 88A paragraph (1) of the Manpower Act which reads "Worker or laborer's right to wages arises when a working relationship occurs between the worker/laborer and the entrepreneur which ends when the employment relationship is terminated."

Providing fair and equitable wages will trigger high work motivation so that the performance of the workers/workers becomes better and of course affects the company's income.[1] Although wages are useful for increasing output and efficiency, it is evident that various difficulties often arise due to the application of an incentive wage system.[3] Therefore, the determination of wages is one of the determining factors for optimizing the success of a company's business.[4]

The wages received by workers are important for their survival, as a mean to help them fulfill their daily needs. A worker would be able to feed their family and also achieve their dreams which would improve their living standard.[5] Nonetheless, wage regulation generally has a number of negative impacts on industrial development such as employment rate decrease.[6]

Law No. 13 of 2003 concerning Manpower as amended by Number 6 of 2023 concerning the Stipulation of Government Regulations in lieu of Law Number 2 of 2022 concerning Job Creation (hereinafter referred to as the Manpower Law), namely strictly regulating wages, by protecting labor wages which are minimum wages based on

the Province or Regency/City area which are directed towards achieving the necessities of a decent life. Based on the law, the regulation of minimum wage is directed at achieving a decent and fulfilling life.[7] We can also understand that the law prohibits business owners from paying their workers lower than the regulated minimum wage limit.[8] The wage determination based on agreement between the business owners and their workers must not be lower than the wage provision stipulated by the applicable laws and regulations.[9]

The issuance of the decision number 1394/Pid.B/2015/PN.JKT.PST stated that the defendant was guilty of committing the crime of "violating the provision of paying wages lower than the minimum wage based on the province/regency/city area". Sentenced punishment against the defendant therefore is imprisonment for a period of 3 (three) months. It is unnecessary to determine the punishment unless later the defendant is proven guilty of committing a crime prior to probation for the last 6 (six) months. and decision number 1662/Pid.B/2015/PN.LBP which stated that the defendant was proven legally and convincingly guilty of committing the crime of paying wages under the regulated minimum level in Deli Serdang Regency. Sentence given to the defendant is imprisonment of 1 (one) year. Ordering the sentence does not need to be carried out unless there is another order from the Judge in the future because the defendant committed the crime before the 2 (two) year probationary period expired. As well as decision number 725/Pid.Sus/2019/PN TJK which stated that the defendant was guilty of committing the crime of paying wages lower than the regulated minimum. Sentenced punishment against the defendant therefore with imprisonment for 1 (one) year in prison. However, the defendant is not obligated to serve the sentence unless there is a Judge's decision that determines otherwise, because the defendant committed a crime before the probationary period of 1 (one) year and 5 (five) months ended and a fine of Rp. 100,000,000.00 (one hundred million rupiah) provided that if the fine is not paid then it is replaced by imprisonment for 2 (two) months.

Legal certainty requires the formulation of rules in statutory regulations that must be implemented strictly.[10] Leden Marpaung argued, that law enforcement can only be felt if public perception reflects that certain punishment is commensurate with the mistake. The concept has become an elaboration of the legal apparatus both in the formulation of laws and in their enforcement or application.[11]

Efforts to present a sense of justice, legal certainty and benefit are largely determined by the role of judges as part of law enforcement instruments in imposing sentences or criminal decisions on suspects and defendants who have committed criminal acts.[12] This role must be taken in a juridical, systematic and orderly manner, so that every legal issue can be solved properly, correctly and scientifically accountable.[13] There are at least 2 (two) types of components of the juridical requirements. First, it has a legal basis; material and formal law. Second, it provides legal certainty; the judge's decision must be based on applicable law, without leaving aspects of a sense of justice and expediency.[13]

2. RESEARCH METHOD

This research is normative or descriptive legal research. The approaches used in this research are case and statute approaches. Types and sources of research data include primary and secondary legal materials. Primary legal materials include the Criminal Code, Law No. 13 of 2003 concerning Manpower as amended by Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, and verdict number 1394/Pid.B/2015/PN.JKT.PST, number 1662/Pid.B/2015/PN.LBP, and number 725/Pid.Sus/2019/PN TJK. Meanwhile secondary legal materials include the scientific work and research results relevant to this research. The technique for collecting legal material that supports and relates to the presentation of legal writing is a document study (literature review). The legal material analysis technique used is the deductive syllogism analysis technique, the use of which stems from the submission of the major premise (statement of a general nature), then the minor premise (statement of a specific nature) is proposed and then a conclusion is drawn.

3. RESULTS AND DISCUSSION

3.1 Arrangements for Imprisonment with Probationary Period

According to the classical school, the purpose of criminal law is to protect individuals from the authorities or the state.[14] On the other hand, according to modern legal schools, the purpose of criminal law is to protect society against crime,[15] thus criminal law must pay attention not only towards the committed crime, but also the state of criminals. Therefore, modern schools are considered to be influenced by the development of criminology.

The characteristic of criminal law that distinguishes it from other legal fields is that criminal law does not actually establish its own norms but already lies in other fields of law, and criminal sanctions are held to strengthen adherence to norms outside criminal law.[14] The emergence of parole and alternative punishment other than

imprisonment is a reaction to public dissatisfaction with punishments in form of liberty deprivation, especially the ones decided on short-term crime, because the effect of the sentencing brings more negative effect towards the community in the long term.[16]

Prison sentences with probation is regulated in Article 14a paragraph (1) Criminal Code which states that "If a judge imposes a maximum sentence of one year or imprisonment, not including a substitute imprisonment sentence, then in his decision the judge may also order that the sentence not be served, unless at a later date there is a judge's decision that determines otherwise, because the convict committed a crime before the probationary period specified in the order above expired, or because the convict during the probationary period did not fulfill special conditions which may be specified otherwise in the order".

Article 14b of the Criminal Code provides for a probationary period of 3 (three) years for crimes and violations referred to in Article 492, Article 504, Article 505, Article 506 and Article 536 of the Criminal Code. Article 14c of the Criminal Code states that in addition to the general requirement that the convict will not commit other criminal acts, the judge can stipulate special conditions that the convict, within a shorter time than his probation period, must compensate all or part of the losses incurred by his criminal act.

Probationary sentences are based on the idea that not all criminals (convicts) must be put in prison, especially first-time offenders. Also, in order to prevent the influence of the prison environment, the sentenced offenders are given the opportunity to improve themselves outside prison.[17]

Hamzah and Rahayu mentioned that conditional sentence (for example sentence with probationary alternative) is imposing but it does not mean that it has to be served, unless later it turns out that the convict before the trial period has committed another crime or violated the agreement (conditions) given to him by the judge, so the criminal decision remains, but only the implementation of the sentence is not carried out.[18]

The article in the Criminal Code in form of conditional sentence emphasizes more on the probationary period, especially verdicts that impose imprisonment less than 1 (one) year period.[17] Probationary is a type of alternative punishment implemented to prevent incarceration, which relies on the ability of convicted to fulfill certain general or special requirements during its application period.[19] This is why, the system would work better if probationary period can be decided as a final decision without further dispute or retrials.[20]

In the event that a certain convict fails to comply with the general or special requirements during probationary period, the court may order the individual to serve imprisonment. This clause does not consider the change of behavior during probationary period, because a judge can directly order the individual to be imprisoned based on previously determined sentence instead a new sentence.[21] This is based on the premise that accuracy in determining the severity of a sentence is tied to the conditions and situation at a time, both in relation to his actions (objective aspect) and in relation to the person (subjective aspect).[20]

3.2 Case Analysis

a. Verdict Number 1394/Pid.B/2015/PN.JKT.PST

Suhardjo Witono (convicted) as the Main Director of PT. Patria Anugerah Sejati, was reported on an indication of alleged minimum wage non-compliance criminal act as regulated in the legal area of the Central Jakarta Administrative City. Based on that, Arya Pinandita as the Labor Inspector representing the Central Jakarta Administrative City Sub-Office of the Manpower and Transmigration carried out supervisory duties at the company where the convicted as the Main Director of PT. Patria Anugerah Sejati located in 73rd Pangeran Jayakarta St., Jayakarta Center Housings Block B1, Number 12 Central Jakarta. The results of the monitoring revealed that the wages to 17 (seventeen) workers in 2013 was only Rp.750,000 (seven hundred and fifty thousand Rupiah) per month, even though the Provincial Minimum Wage in Jakarta Province as regulated by Governor Decree Number: 189 of 2013 is at Rp 2,200,000 (two million two hundred thousand Rupiah).

After receiving notification of Examination Note dated March 18 2013 Number: 388/-1.836-3, regarding the violations occurred at PT. Patria Anugerah Sejati, Affirmation Note Number: 600/-1.836.3 dated April 16 2013 and Service Summons dated May 6 2013 Number: 744/-1835.3 the defendant as the Main Director of PT. Patria Anugerah Sejati did not show any goodwill to adjust the payment to the underpaid 17 (seventeen) workers at total due of Rp. 40,549,500 (forty million five hundred forty-nine thousand and five hundred Rupiahs).

The absence of goodwill to make amends towards the underpaid employees resulted in the problem continuing in the trial process. However, before the panel of judges decided on the case, the defendant regretted his actions and paid the rest of the shortfall employee's basic salary and to guarantee the 17 employees work status at the company.

b. Verdict Number 1662/Pid.B/2015/PN.LBP

Kargiat (convicted) as Director of PT. The Asia Raya Foundry was questioned at the Lubuk Pakam District Court. It started with the transfer of case files from the North Sumatra Police Department which were received by the Manpower and Transmigration Office of Deli Serdang Regency regarding the alleged labor crime occurred against employees of PT. Asia Raya Foundry, located at Sei Blumei (Utama) St. No. 118 Dagang Kelambir Village, Tanjung Morawa Sub-District, Deli Serdang Regency. As reported by the Labor Inspectorate on inspection results, it was revealed that the payment for 30 (thirty) employees in the company is lower than the regulated Sectoral Minimum Wage for Deli Serdang Regency in 2010, 2011, 2012 and 2013. Based on these findings, the Labor Inspectorate made the calculations and determined the wage shortfalls and conveying the results to the Company Leaders of PT. Asia Raya Foundry with an explanation that the working relationship that occurs between workers who are recruited through Employment Service Provider Companies and the Company Leaders PT. Asia Raya Foundry.

The minimum wage non-compliance practiced by the company resulted in underpayment of 30 employees on behalf of Rianto Sinaga and friends in the amount of Rp. 181,586,500 (one hundred eighty-one million five hundred eighty-six thousand and five hundred Rupiahs). Before the panel of judges decided the case, it was acknowledged that 17 (seventeen) people had already received their payment shortfalls, meanwhile the rest (13 employees) were still in settlement due to missing residential address and the only means to invite these workers was to publish an announcement through printed media.

c. Verdict Number 725/Pid.Sus/2019/PN TJK

Sukardi Bin Ratiman H (convicted) as Director of PT. Pratama Prima Sentosa or Fueling Station Number 24,351,112 began started operating at the end of December 2016 at Jalan Ratu Dibalau No.68 Way Kandis Sub-District Tanjung Happy Regency, City of Bandar Lampung. The station was operated by namely 1 (one) coordinator, 3 (three) supervisors, 1 (one) administration employee, 13 (thirteen) operators and 1 (one) Office Boy. PT. Pratama Prima Sentosa provided wages employees from January to December 2017 in the amount of Rp. 2,000,000 (two million rupiahs) for administration employee, Rp. 1,750,000 to Rp. 1,350,000 for operators, and Rp. 1,200.00 to 1,300,000 for office boy. Furthermore, on January until July 2018, the wages distributions are Rp. 2,250,000 for supervisors, Rp. 2,000,000 for operators, Rp. 1,485,000 for administration employee, and Rp. 1,375,000 for office boy. The convicted was aware that the Minimum Wage Regulation for the City of Bandar Lampung was at Rp. 2,054,365.32 (Two million fifty-four thousand three hundred sixty-five rupiah point thirty-two cents), which further increased at 2018 to Rp. 2,263,390.87 (Two hundred sixty-three thousand three hundred and ninety rupiah point eighty-seven cents).

Initially, the convicted was not willing to adjust wages to the regulated minimum wage as instructed by the employment service. Instead, the convicted directed Ms. Eni Lindawati to tell the employees that they are welcome to leave or resign if they are not satisfied with their wages. However, after the case moved to trial at the Defendant's District Court, the wages of employees were adjusted to the regulated minimum wage in 2018, namely at Rp. 2,263,390.87 (two million two hundred sixty-three thousand three hundred ninety point eighty-seven cents).

3.3 Legal Considerations of Judges in Deciding the Imposition of Imprisonment with Probationary Period

According to Roeslan Saleh: "Imprisonment is the main punishment amongst criminal punishment with the highest amount of independency losses, both temporarily or life imprisonment." [22] Andi Hamzah further emphasized that "Prison is a form of punishment aimed to take away criminals' independencies." However, in reality, imprisonment is not only taken away independency, but also exiles criminals from the society. [23] Dmitrieva et al. simplified imprisonment as the loss of independence or freedom through confinement. [24] Prison sentences are more severe because the sentences are given as consequences on heavy crimes, meanwhile confinement are often connected to negligence. The minimum prison sentence is one day and the maximum is life. As regulated in Article 10 and Article 12 of the Criminal Code, prison sentences are characterized as:

- Imprisonment for life or certain period of time.
- Imprisonment for at least one day, and fifteen years at the longest period.
- Prison sentences for a certain period of time could be imposed for twenty consecutive years as alternative to death penalty or between life imprisonment and imprisonment for a certain time, as well as in the event that the limit of fifteen years is exceeded due to additional sentences due to repeated act or as stipulated by Article 52 of the Criminal Code.
- Imprisonment for a certain period of time for less than twenty years

Article 12 of the Criminal Code applies life imprisonment or temporary imprisonment and imprisonment for a certain period of time, namely a minimum of 1 day and a maximum of 15 years or can be imposed for 20 years, but not more than 20 years. Barda Namawi Arif stated that "Prison sentences do not only result in deprivation of liberty, but also have negative consequences for matters related to the deprivation of liberty itself. The negative consequences include the deprivation of a normal sexual and private life, so that homosexual intercourse and masturbation often occur among convicts.[25]

Based on the description above, in principle, imprisonment is closely related to the deprivation of liberty, which often labelled negative due to its ability to reduce human condition both physically and mentally. Although it is not rare that the panel of judges ultimately release the convicted due to their good behavior and willingness to pay the wages shortfalls as regulated. A probationary period in a prison sentence, or what is also often referred to as a conditional sentence, is one available alternative to imprisonment. Probation period is given under certain conditions of which if it failed to be fulfilled will lead the convicted to imprisonment The existence of the convicting conditions that enhance the term "probationary".

Probation represents conviction under certain conditions, which means the sentence will be suspended or abolished shall the conditions are met. Article 14a Paragraph (1) of the Criminal Code regulates that "If a prison sentence of up to one year is imposed and if a prison sentence is imposed in lieu of a fine, the judge may order that the sentence not to be carried out, unless in the future there is another order in the judge's decision, because the convict committed a crime before the probationary period specified in the order above expires, or because the convict during the probationary period does not fulfill special requirements which may be specified otherwise in the order".

Conditional sentence is often referred to trial decision (*voorwaardelijke veroordeling*) and is not a type of punishment because it is not mentioned in Article 10 of the Criminal Code. The word conditional sentence is also inappropriate, because it can give the impression that what depends on the condition is the sentence, or the imposition of the sentence. In reality, what depends on certain conditions is the implementation or execution of the sentence that has been imposed by a judge with permanent legal force. Based on that, conditional sentence is a system of imposing alternative sentences, not as a form or type of punishment but as a condition for the convict not to carry out the main sentence.

Judging from its term, conditional sentence should meet a number of conditions that must be fulfilled by the convicted. These conditions are distinguished between:[20]

- General condition; if the judge prescribes a conditional sentence in the verdict, the general conditions must be met. General requirements are determined by the judge and must be fulfilled at a certain period of time (probation period), and the convicted must not conflicted with law.
- Special requirements; optional or special conditions decided by the judge in form of compensation caused by criminal actions for the government or for the commission

Conditional sentence is driven by the idea that not all criminals (convicts) must be put in prison, especially first-time offenders, in order to prevent larger negative impacts on the community. This is why, conditional sentence provides the convicted the opportunity to make amends instead of imprisonment.[17] The judge's task is basically to make a decision in every case (conflict), to determine matters such as legal relations, the legal value of behavior, and the legal position of the parties involved in a case. To be able to resolve conflicts impartially based on applicable law, judges must always be independent and free from the influence of any party including the government; decisions are only produced based on relevant facts and legal principles which formed by the juridical basis.[26] A judge must behave fairly; placing something where it belongs, giving what is due, based on the principle that all men are equal before the law. The goal is to provide equal treatment and opportunity to everyone.[27]

4. CONCLUSIONS

Judges are appointed basically to make the right decisions on every case (conflict), determines matters such as legal relations, the legal value of behavior, and the legal position of the parties involved in certain case. Prison sentence or imprisonment is aimed to deprive criminals from freedom and independence. This can create negative labelling because it often seen degrading the dignity and status of convicts. The alternative to imprisonment is known as conditional sentence. The objective of conditional sentence is to provide convicts with opportunity to make amends. In the case of underpaid employees, the convicts are given the opportunity to repay what is owed or to adjust their waging policies as regulated. Goodwill will give benefits both for the convicted and for the employees because it imposes fairness by returning the rights and obligations of each party conflicted in the case.

5. REFERENCES

- [1] A. Dube and A. Lindner, "City limits: What do local-area minimum wages do?," *Journal of Economic Perspectives*, vol. 35, no. 1, pp. 27–50, 2021, doi: 10.1257/JEP.35.1.27.
- [2] S. Clibborn and S. Hanna-Osborne, "The employer perspective on wage law non-compliance: State of the field and a framework for new understanding," *Industrial Relations*, no. August 2022, pp. 1–28, 2023, doi: 10.1111/irel.12333.
- [3] Heidjrahman and S. Husnan, *Manajemen Personalialia*. Yogyakarta: Manajemen Personalialia, BPFE, 2005.
- [4] D. Card, C. Brown, A. Dube, and B. Fitzenberger, "Reallocation Effects of The Minimum Wage," *The Quarterly Journal of Economics*, vol. 137, no. 1, pp. 267–328, 2022.
- [5] Soedarjadi, *Hukum ketenagakerjaan di Indonesia*. Yogyakarta: Pustaka Yustisia, 2008.
- [6] J. Clemens, "How do firms respond to minimum wage increases? understanding the relevance of non-employment margins'," *Journal of Economic Perspectives*, vol. 35, no. 1, pp. 51–72, 2021, doi: 10.1257/JEP.35.1.51.
- [7] T. Schulten and T. Müller, "What's in a name? From minimum wages to living wages in Europe," *Transfer*, vol. 25, no. 3, pp. 267–284, 2019, doi: 10.1177/1024258919873989.
- [8] M. E. Whiting, G. Hugh, and M. S. Bernstein, "Fair Work: Crowd Work Minimum Wage with One Line of Code," in *Proceedings of the AAAI Conference on Human Computation and Crowdsourcing*, 2019, vol. 7, pp. 197–206, doi: 10.1609/hcomp.v7i1.5283.
- [9] L. Husni, *Hukum Ketenagakerjaan Indonesia Edisi Revisi*. Jakarta: Rajawali Pers, 2000.
- [10] R. Saraswati, A. Ristyawati, and R. S. Basworo, "Recent developments and changes in the governance of regional legal products in Indonesia: Supervision, evaluation and clarification mechanisms," *International Journal of Innovation, Creativity and Change*, vol. 12, no. 7, pp. 1–9, 2020.
- [11] L. Marpaung, *Tindak Pidana Terhadap Nyawa dan Tubuh (Pemberantasan dan Prevensinya)*. Jakarta: PT. Sinar Grafika, 2005.
- [12] Hasaziduhu Moho, "Penegakan Hukum di Indonesia Menurut Aspek Kepastian Hukum, Keadilan, dan Kemanfaatan," *Universitas Dharmawangsa*, vol. 13, no. 1, pp. 138–149, 2019.
- [13] F. M. Wantu, *Hukum Acara Pidana dalam Teori dan Praktek*. Yogyakarta: Penerbit. Reviva Cendekia, 2011.
- [14] T. Prasetyo, *Hukum Pidana*. Jakarta: Rajawali Pers, 2010.
- [15] I. Sari, "Perbuatan Melawan Hukum (PMH) Dalam Hukum Pidana Dan Hukum Perdata," *Jurnal Ilmiah Hukum Dirgantara*, vol. 11, no. 1, pp. 53–70, 2020, doi: 10.35968/jh.v11i1.651.
- [16] J. Schnittker and M. Massoglia, "A sociocognitive approach to studying the effects of incarceration," *Wisconsin Law Review*, vol. 2015, no. 2, pp. 349–374, 2015.
- [17] Muladi, *Lembaga Pidana Bersyarat*. Bandung: Alumni, 2008.
- [18] A. Hamzah and S. Rahayu, *Suatu Tinjauan Ringkas Sistem Pemidanaan di Indonesia*. Jakarta: Akademika Pressindo, 1983.
- [19] M. Nabi, S. Hussain, and M. Kamran, "Overcrowded Prisons in Pakistan: Understanding the Critical Role of Probation, Parole Officers and Courts," *Pakistan Journal of Social Research*, vol. 03, no. 01, pp. 40–47, 2021, doi: 10.52567/pjsr.v3i01.185.
- [20] S. Handoyo D.P., "Pelaksanaan Pidana Bersyarat Dalam Sistem Pemidanaan Di Indonesia," *Palar / Pakuan Law Review*, vol. 4, no. 1, 2018, doi: 10.33751/palar.v4i1.782.
- [21] L. Manting and U. Pamulang, "Pengelola Overcrowding di Penjara Indonesia: Sebuah Kajian Literatur," *Aufklarung: Jurnal Pendidikan, Sosial dan Humaniora*, vol. 2, no. 4, pp. 504–509, 2022.
- [22] R. Saleh, *Stelsel Pidana Indonesia*. Jakarta: Aksara Baru, 1987.
- [23] A. Hamzah, *Sistem Pidana Dan Pemidanaan di Indonesia*. Jakarta: Pradnya Paramita, 1993.
- [24] J. Dmitrieva, K. C. Monahan, E. Cauffman, and L. Steinberg, "Arrested development: The effects of incarceration on the development of psychosocial maturity," *Development and Psychopathology*, vol. 24, no. 3, pp. 1073–1090, 2012, doi: 10.1017/S0954579412000545.
- [25] B. N. Arief, *Kebijakan Legislatif dengan Pidana Penjara*. Semarang: Badan Penerbit UNDIP, 1996.
- [26] F. Kasuma, *Etika Profesi Hukum*. Palembang: UIN Raden Fatah, 2018.
- [27] W. S. Mustofa, *Kode Etik Hakim, Edisi Kedua*. Jakarta: Kencana Prenadamedia Group, 2013.